

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EUGENE SZYMANSKI,

Petitioner,

Case Number 05-10241

Honorable David M. Lawson

v.

PAUL RENICO,

Respondent.

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ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner filed a petition for a writ of habeas corpus on September 14, 2005, and amended petitions on January 5, 2006 and February 5, 2010. On March 7, 2013 the Court entered an opinion and order determining that the petitioner's claims lacked merit. On this basis, the Court entered judgment against the petitioner. On the same date, the Court entered an order denying a certificate of appealability on all of the petitioner's claims.

On April 25, 2013, the petitioner filed a motion for a certificate of appealability. The Court will treat the petitioner's motion as a motion for reconsideration under Local Rule 7.1. Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(g)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(g)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). However, motions for reconsideration should not be granted when they "merely present the same issues ruled upon by the court, either expressly or by reasonable implication." E.D. Mich. LR 7.1(g)(3).

The Court concludes that the petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3). In his motion, the petitioner repeats the arguments regarding the gunpowder marks and bullet wounds that he relied upon in his petition. To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted). The Court finds that the petitioner has not demonstrated that the Court’s conclusion that reasonable jurists could not debate whether the petitioner’s claims had merit was based on a palpable defect. Therefore, the Court will deny the petitioner’s motion.

Accordingly, it is **ORDERED** that the petitioner’s motion for a certificate of appealability, construed as a motion for reconsideration [dkt. #97] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 6, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 6, 2013.

s/Deborah R. Tofil
DEBORAH R. TOFIL